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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,773	07/12/2006	T. Kjetil Froyland	1935-00183	7854
26753 7590 01/20/2010 ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202			EXAMINER WILLIAMS, MONICA L	
			ART UNIT 3644	PAPER NUMBER
			MAIL DATE 01/20/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/585,773

Applicant(s)

FROYLAND, T. KJETIL

Examiner

MONICA L. WILLIAMS

Art Unit

3644

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-17 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-12, 14, 15 and 17 is/are rejected.
- 7) ☒ Claim(s) 19-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notes of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 9-12, 14-15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Halaunbrenner (3,824,957).

3. In re claim 9, with reference to col.3 lines 1-16 and Figures 4, 5, and 7, Halaunbrenner discloses apparatus comprising: an emigration device (10) to be placed on a sea bed and a rearing device (10'), the emigration device being arranged for engagement with the rearing device, and the emigration device being arranged to be placed between the sea bed and the rearing device, wherein the emigration device comprises at least one cut-out (6) which arranges for crustacea to migrate from a portion of a second essentially central cut-out (6') in the rearing device onto the sea bed.

4. In re claim 10, with reference to col.3 lines 51-54 and Figure 4, Halaunbrenner discloses wherein the emigration device is provided with at least one side support element (12) being independent of the rearing device (10') and projecting from a top portion of a base of the emigration device (10) and extending essentially parallel to at least a portion of the central cut-out (6') of the rearing device.

5. In re claim 11, with reference to col.3 lines 51-54, Halaunbrenner discloses wherein the at least one support element (15) is formed by a rod element (hollow cylinder).
6. In re claim 12, with reference to col.3 lines 19-22, Halaunbrenner discloses wherein the at least one support element (12) is formed by an element forming a wall (corner flanges) of the rearing device.
7. In re claim 14, with reference to col.4 lines 4-17 Halaunbrenner discloses wherein the emigration device is provided with a mounting element (15) fixed to the base for the securing of the rearing device to the emigration device.
8. In re claim 15, with reference to col.4 lines 4-17 Halaunbrenner discloses wherein the mounting element (15) is arranged to extend up through a portion of the cut-out (6') of the rearing section, and comprising a clamping device (22) which is adjustably connected to the mounting body, being arranged to exert a force against a portion of the rearing device.
9. In re claim 17, with reference to col.34 lines 6-9 Halaunbrenner discloses wherein outlet openings (areas between 9 and 10, Fig.7) of the emigration device are provided with a protective device (8) providing protection for the crustacea juveniles as they leave the emigration device.

Allowable Subject Matter

10. Claims 19-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments filed 11/10/2009 have been fully considered but they are not persuasive.

12. In response to applicant's arguments that Halaunbrenner does not disclose a second cut-out, this argument is not persuasive because as shown in Figure 5 when two trays are stacked on each other the emigration device is shown at (10) and the rearing device is shown at (10') both of these contain cut-outs (6 and 6' respectively).

13. In response to applicant's arguments that Halaunbrenner does not disclose a side support independent of the rearing device, this argument is not persuasive because the side support (12) of the emigration device (10) is independent of the rearing device (10') because the two are separate trays, as shown in Figure 5.

14. In response to applicant's arguments that Halaunbrenner does not disclose a mounting element fixed to the base because the collar (18) of Halaunbrenner is not fixed to the lowest plate, this argument is not persuasive, the Examiner maintains that the emigration device (10) is provided with a mounting element (15) fixed to the base, which the Examiner reads as the base of the emigration device, for the securing of the rearing device (10') to the emigration device. Col.3 line 60 to col.4 line 17 discloses that the mounting element (15) is held in a fixed position and is considered to be fixed to the base of the emigration device.

15. In response to applicant's arguments that the key (22) mechanism of Halaunbrenner cannot be considered an adjustable clamping device, this argument is not persuasive because the key (22) is considered a clamping device because it keeps

the plate in position by engaging in a wall (15) and in a recess of wall (7) and it is considered to be adjustable because it is removable and the Examiner maintains that this meets the broad limitations of the claim.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MONICA L. WILLIAMS** whose telephone number is (571)270-3113. The examiner can normally be reached on Mon to Fri 6:00-3:30, Alternate Friday off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael R Mansen/
Supervisory Patent Examiner, Art
Unit 3644

MW 01/08/2010